IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

MFA.No. 1083 of 2001(B)

OP(MV.)507/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPALAM
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APPELLANT: PETITIONER

SOMARAJAN,
S/O. KUNHI RAMAN,
AGED 28 YEARS, CHOTTATHODI HOUSE,
KOTHAYUR, VANIAMKULAM POST,
OTTAPALAM TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.O.P.NANDAKUMAR
SRI.V.A.AJAI KUMAR
SRI.K.P.THANGA KOYATHANGAL

RESPONDENTS:
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1. **MRS. S.S.KOTHARI, FATHER'S NAME AND AGE NOT KNOWN, PROPRIETOR, SKYLARK ROADWAYS, HEAR RAILWAY STATION, ANKLESHWAR, GUJARATH.**

2. **MR.MACHINDRA, S/O. SOPAN THERAT, AGE NOT KNOWN, A.P. KAMARAGEON, AHMEDNAGAR, GUJARATH.**

3. **THE NEW INDIA ASSURANCE COMPANY-LIMITED , KARNAWAT BUILDING, OPP. SIDHESWAR THEATRE,RAJAGURUNAGAR, PUNE.**

R3 BY ADV. SRI.K.K.M.SHERIFF SC INSURANCE

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 07/ 12/2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. Koshy & K.Hema, JJ.

M.F.A.No.1083 of 2001

Dated this the 7th day of December, 2007

Judgment

Koshy,J.

Appellant at the age of 24 met with a motor accident on 16.4.1997. While he was driving a jeep, a lorry bearing registration No.GJ 16 U 6487 driven by the second respondent came from the opposite direction and hit the jeep. As a result of the accident, appellant sustained comminuted fracture of lower 1/3rd of shaft of femur, fracture of shaft of fibula upper 1/3rd left side, penetrating injury to inner aspect of lower aspect of foot apart from lacerated injuries. He claimed a compensation of Rs.3,50,000/- alleging negligence on the part of the driver of lorry insured by the third respondent insurance company. The tribunal granted only a compensation of Rs.1,09,372/- and directed the insurance company to deposit the compensation. Only quantum of compensation is disputed in this appeal.

2. Ext.A4 disability certificate was accepted by the tribunal. The femur fracture was treated by closed interlocking nailing and tibial spine fracture was treated by long leg plaster. The

doctor assessed 4% permanent disability. The disability certificate reads as follows:

> "He sustained fracture of shaft of left femur with fracture of trochanter and avulsion fracture of tibial spine left knee and fracture of neck of (L) fibula with lacerated wound of left thigh.
>
> Initially he was treated with emergency wound debridement and tibial traction and the fracture femur was treated with closed interlocking nailing and the tibial spine was treated conservatively using long leg plaster.
>
> He was discharged on 8.5.1997 and subsequently followed up as outpatient.
>
> He was again admitted on 15.10.1998 and the nail was removed on 16.10.1998 and patient was discharged on 19.10.1998 and followed up as outpatient.
>
> Patient now complains of occasional pain left knee and Rt. thigh and knee especially after walking.
>
> X-ray taken on 16.10.1998 after removal of the nail shows that the fractures have united.
>
> Range of movement of both knees are normal, but there is pain during squatting.
>
> The following points were noted on examination.
>
> 1. 6 c.m. long surgical scar over the Rt. gluteal region.

2. 4 c.m. long surgical scar on the outer lower aspect of the Rt. thigh.

3. Mild tenderness in the distal locking site.

The total permanent disability arising out of the above injuries comes to 4% (four percent) in the McBride scale."

The accident occurred in 1997. The tribunal has fixed only Rs.1,500/- as the monthly income. The appellant was a driver by profession. He was possessing licence to drive a passenger vehicle with badge. The monthly income fixed was only Rs.1,500/-. According to the claimant, he was getting Rs.100/- per day. We are of the opinion that Rs.1,500/- fixed as monthly income is a very low amount and being a jeep driver at least Rs.2,500/- ought to have been fixed as the monthly income. If that be so, compensation payable for permanent disability will be Rs.2500 x 12 x 17 x $\frac{4}{100}$ = Rs.20,400/-. The tribunal has awarded Rs.13,000/- under the head injury compensation and Rs.12,500/- as disability compensation. That shows that total compensation for disability and loss of earning power due to the injuries awarded by the tribunal is higher than what is payable to the appellant. Rs.5,100/- was the excess amount. The additional amount has to be added to the

compensation for pain and suffering as only Rs.13,000/- was awarded by the tribunal under this head. The tribunal has found that he was under treatment for six months. On the basis of Rs.1,500/- as monthly income, the tribunal has awarded Rs.9,000/- as compensation for actual loss of earning during the treatment period. Since we have fixed monthly income as Rs.2,500/-, we are of the opinion that the appellant is entitled to Rs.6,000/- more for actual loss of earning. The above Rs.6,000/- should be deposited by the third respondent insurance company with 7.5% interest from the date of application till its deposit over and above the amount decreed by the tribunal. On deposit of the amount, appellant is allowed to withdraw the same.

J.B.Koshy
Judge

K. Hema
Judge

vaa

J.B. KOSHY AND
K.HEMA,JJ.

M.F.A. No. 1083 of 2001

Judgment

Dated:7th December, 2007